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OFFICE OF PETITIONS

In re Application of  
Perlmutter et al.  
Application No. 10/657,138  
Filed: September 9, 2003  
Attorney Docket No. 16406-0050001

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: DECISION DISMISSING LETTER  
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This letter is in response to applicants' "LETTER REGARDING PATENT TERM ADJUSTMENT PURSUANT TO COMMENT 43 OF THE FINAL RULE (09/18/2000)" filed November 18, 2005 advising the Office of a discrepancy in the PTA determination. The Office thanks applicants for their good faith and candor in bringing any discrepancy to the attention of the Office.

The letter submitted by Applicants is **Dismissed**. The patent term adjustment at the time of the issuance of the patent is confirmed.

Applicants assert that there is a discrepancy in the PTA determination and there may be more applicant delay or less PTO delays than the Office PTA determination. Applicants did not address what such discrepancy may be. If applicants are aware of anything that may affect the PTA determination, the Office invites applicants to have the specific issue reviewed.

Upon review of the determination, the PTA determination is accurate. The Office notes that it failed to act upon the application within fourteen months of the filing of the application, a delay of six days. See 37 CFR 1.702(a)(1). In addition, the Office failed to issue the application with four months of the payment of the issue fee and other requirements being satisfied under 37 CFR 1.702(a)(4). This delay amounted to a 16-day delay. Accordingly, the amount of USPTO delay at the time of the issuance of the patent is 22 (16 + 6=22) days. Applicants did not fail to engage in any reasonable efforts to conclude prosecution of the application.

The Office believes that applicants may have submitted this good faith and candor letter because applicants filed a terminal disclaimer in the application. The Office notes that it will determine the PTA even if a terminal disclaimer is filed. On the front of the patent the Office publishes the following:

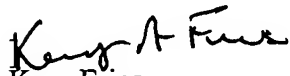
**Subject to any disclaimer, the term of the patent is extended or adjusted under 35 U.S.C. 154(b) by\*\* days.**

Accordingly, Applicants must take into consideration the terminal disclaimer when determining the actual expiration date of the patent.

The Office will forward the file to the file repository unit for storage of the issued patent.

Because this letter was submitted out of good faith and candor, no fee will be assessed concerning this letter.

Any questions related to this decision can be addressed to Kery Fries, Office of Patent Legal Administration, at 571-272-7757.

A handwritten signature in black ink, appearing to read "Kery A. Fries".

Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy